

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAVID BONENBERGER,)	
)	
Plaintiff,)	
)	
v.)	No. 4:12-CV-21-CDP
)	
THE ST. LOUIS METROPOLITAN POLICE)	
DEPARTMENT, et al.,)	
)	
Defendants.)	

JURY TRIAL

EXCERPT OF CLOSING ARGUMENTS
FROM VOLUME 3

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

AUGUST 21, 2013

APPEARANCES:

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1 (Excerpted proceedings began at 10:49 a.m.)

2 MS. PETRUSKA: Thank you, Your Honor. Good morning.
3 The good news is when you see me facing you like this again
4 the end is in sight, and so as I begin trying to explain this
5 case to you, I'd like to first thank you for being here, for
6 your time and your attention and your service in what is a
7 very important case to my client. I told you at the beginning
8 of this case, factually, it's not very complicated. It's
9 still not a complicated case. It really comes down to who you
10 believe. As we said during jury selection, you are the trier
11 of fact. You decide what the facts are. In this regard, you
12 decide the credibility of the witnesses. Abraham Lincoln said
13 no man has a good enough memory to make himself a successful
14 liar. Our own native son Mark Twain said a person who tells
15 the truth has nothing to remember. You decide who's telling
16 the truth and who's not. You do that based on the evidence in
17 this case. I don't believe that that's going to be a very
18 difficult job for you to do. In order to find for the
19 Defendants, you have to believe unequivocally Lieutenant Muxo.
20 If you believe Lieutenant Muxo, reward the Department, but if
21 you don't believe him, don't make a bad situation worse.

22 So let's talk about the evidence. As I explained a
23 minute ago, your decision today is going to be based on
24 conflicting testimony. Sergeants Boelling and Bonenberger
25 have told the same story consistently. They're the ones that

1 have nothing to remember, but the same can't be said with
2 Lieutenant Muxo and Colonel Harris. You've heard the evidence
3 in this case. You've seen Sergeant Bonenberger's emails. You
4 heard the Defendant say this is going to be a he said/she
5 said. There's no he said/she said here. You've got the
6 emails showing that Sergeant Bonenberger knew that he wasn't
7 going to get that job before he even applied for it. In
8 contrast, shortly after the case was filed, Lieutenant Muxo
9 and Colonel Harris admitted that they exchanged emails about
10 who would fill the open Assistant Director position. That's
11 really the start of the conspiracy here. So if you find that
12 Lieutenant Muxo engaged in a conspiracy, you really have to
13 find that Lieutenant Harris engaged in a conspiracy because
14 the emails went to each other. They both admitted this.

15 Use your common sense. Would two people make the
16 same mistake on something this important? Would a person
17 admit that -- to something being true without checking to see
18 if it was true first, particularly when that person is being
19 sued? The emails exchanged between Lieutenant Colonel Harris
20 and Lieutenant Muxo about who would fill that Director
21 position -- they were never produced in this case. Again, you
22 get to use your common sense. They're now denying that these
23 emails ever existed. Why? They're denying that the emails
24 ever existed because they would show that Sergeant Bonenberger
25 and Sergeant Boelling are the ones telling the truth, not the

1 Defendants.

2 Do you believe Sergeant Bonenberger and Sergeant
3 Boelling? They both told you the fix was in before Sergeant
4 Bonenberger even applied for that position. Or on the other
5 hand, do you believe the Defendants, who, if you noticed, have
6 an answer for everything, but the answers they have given you,
7 they just don't make sense, and I'm going to talk about that a
8 little later, but let's first talk about Sergeant Boelling.
9 Do you really believe that she would come in here and tell you
10 lies as the Defendants would have you believe and subject
11 herself to cross-examination simply because she knew Sergeant
12 Bonenberger and they worked together for several years? Any
13 motive to lie in this case would be to support the Defendants,
14 to gain favor with the command staff and not to risk her
15 career by telling you the truth. Sergeant Boelling told you
16 she had several informal conversations with Lieutenant Muxo
17 about who was going to fill the Assistant Director position.
18 Lieutenant Muxo told her Colonel Harris wanted a black female
19 in the position. When she recommended Sergeant Bonenberger
20 for the position, Lieutenant Muxo told her there was no way
21 Colonel Harris was going to let a white man fill the position.
22 When she asked Lieutenant Muxo who he was interested in in
23 filling the position, it was Sergeant Angela Taylor, who
24 coincidentally got the job.

25 You heard Sergeant Bonenberger testify that he had

1 two different conversations with Lieutenant Muxo about that
2 Assistant Director position, one right after it was posted and
3 another one right after it was filled. After the Assistant
4 Director position was posted, he called Lieutenant Muxo to
5 talk to him about the position. Lieutenant Muxo told him not
6 to even bother putting in for it because it was going to a
7 black female because that's what Colonel Harris wanted. After
8 the position was given to Sergeant Taylor, Lieutenant Muxo
9 sought Sergeant Bonenberger out at a barricaded subject scene.
10 He told Sergeant Bonenberger he had to bring color down to the
11 Academy because that's what Colonel Harris wanted. Should you
12 believe Sergeant Bonenberger or Lieutenant Muxo? Lieutenant
13 Muxo admits having both of those conversations, but he denies
14 that he ever said the position had to go to a black female
15 because that's what Colonel Harris wanted, to bring color down
16 to the Academy.

17 But fortunately, you don't just have to take Sergeant
18 Bonenberger's word for this because we have some other
19 evidence to support it. Colonel Harris told you that when
20 Lieutenant McDuffie, a black male, left the Academy Director
21 position, he chose Lieutenant Henrietta Arnold for it, a black
22 female, but she didn't get the position because she had no
23 experience at the Academy, among other things that the Chief
24 testified about. The Defendants want you to believe that the
25 position of Director and Assistant Director are somehow

1 different and, therefore, the Director needed experience but
2 the Assistant Director really didn't, but you don't have to
3 believe that claim, and the reason you don't have to believe
4 that claim is that the Department's own job description says
5 that two years of teaching experience or two years' experience
6 at the Academy was an absolute requirement for the job.

7 Lieutenant Muxo also wants you to believe that he
8 sought Sergeant Bonenberger out on that barricaded subject
9 scene just to talk to him about a driver training program that
10 didn't even exist yet. Use your common sense. Who does this?
11 Lieutenant Muxo sought Sergeant Bonenberger out on that scene
12 because he felt guilty. He knew that he had to bring color
13 down to the Academy because of Colonel Harris, and as a
14 result, he knew that the best person didn't get the job, and
15 he was trying to throw Sergeant Bonenberger a bone, and the
16 bone that was thrown -- "Keep your mouth shut about what we
17 both know to be true, and I'll try to create a position for
18 you at the Academy, the place we both know you want to be
19 because that's where you put your heart, your soul, your
20 passion during your entire police career."

21 But like I said before, you don't have to just take
22 Sergeant Bonenberger's and Sergeant Boelling's word for all of
23 this, you don't have to believe them, their testimony that
24 they knew the position was going to be filled before Sergeant
25 Bonenberger applied for it, because we've got the two emails,

1 the one to Sergeant Dandridge and the one to Lieutenant Muxo.

2 On September 26th, 2010, Sergeant Bonenberger told
3 Lieutenant Dandridge that he had already spoken to Lieutenant
4 Muxo and there is somebody else already picked for the job.
5 Lieutenant Muxo tried to convince you that the "him" Sergeant
6 Bonenberger was referring to wasn't Lieutenant Muxo, but look
7 at Exhibit 11. You're seeing it now. You can look at it
8 again in your jury room. Sergeant Bonenberger clearly told
9 Sergeant Dandridge that he had already spoken to Lieutenant
10 Muxo about the Assistant Director's position.

11 Sergeant Bonenberger told Lieutenant Muxo on
12 October 1st of 2010, "I submitted my application for the
13 opening just in case something falls through with the person
14 that they have in mind." This is what his wife was talking
15 about when she told you he was gathering all kinds of
16 information to show he was the best person for the job in that
17 off chance that they might really consider the best qualified
18 candidate for the job instead of the person of color.

19 Ask yourself, why would Sergeant Bonenberger send
20 these two emails unless Lieutenant Muxo had already told him
21 the position was going to a black female? It just doesn't
22 make any sense. Lieutenant Muxo testified he never responded
23 to Sergeant Bonenberger's email, claiming that it would be
24 improper to do so when the position was open because it might
25 be perceived as giving Sergeant Bonenberger some kind of

1 unfair advantage. Again, you get to use your common sense.
2 The emails showed someone else had an unfair advantage, and
3 Lieutenant Muxo would have responded to that to correct that
4 false claim if it were in fact false. The reason he didn't
5 respond to that email is because he knew it was true.

6 Finding Defendants Muxo, Harris, and Isom liable for
7 discriminating against Sergeant Bonenberger is fairly easy and
8 obvious, I think, but you may be wondering why the members of
9 the Board of Police Commissioners are Defendants in this case
10 when there's no evidence that they were part of the decision
11 to assign Sergeant Taylor to the Academy because of her race,
12 and I want to explain that and go back to Instruction 5 to do
13 that. In this case, the members of the Board of Police
14 Commissioners are the employer, just like somebody else might
15 be employed by Boeing or Enterprise Leasing. The members of
16 the Board of Police Commissioners, like any other employer,
17 can only act through their employees, in this case, Muxo,
18 Harris, and Isom. Therefore, as you see in Instruction #5,
19 the discrimination of Defendants Muxo, Harris, and/or Isom
20 binds the members of the Board of Police Commissioners, making
21 them liable for this illegal discrimination, just like any
22 other entity would be liable for the illegal discrimination of
23 one of their employees.

24 So I also want to point out that Instruction 11
25 doesn't mean that the members of the Board cannot be liable

1 for the acts of Isom, Harris, and Muxo because Instruction 5
2 says that they can.

3 I also want to point out, as it is submitted in
4 Instruction #9, that the Plaintiff's race need not -- need
5 only have played a part in the Defendants' decision not to
6 give Sergeant Bonenberger the Assistant Director position.
7 That's all you need to find to find in his favor. His
8 reason -- his race need not be the only reason for that
9 decision, so if you believe Lieutenant Muxo and that there
10 were other things that might have motivated him but you also
11 believe that race was a motivating factor, you can still find
12 in favor of the Plaintiff.

13 Now I want to take a few minutes to talk to you about
14 damages. Damages are compensation, so, really, what I'm
15 talking to you about now is the money, but even as I'm talking
16 to you about money, I want to make it clear that to Sergeant
17 Bonenberger this case is about much more than money. How do
18 you even put a dollar amount on losing your dream for an
19 illegal reason? You heard Sergeant Bonenberger and his wife's
20 testimony. He's lost sleep over this. He lost weight
21 originally because of what happened to him. He'll tell you
22 now he gained it back, but, you know, at the time it happened,
23 it had a big impact on him. Both told you he's not the same
24 man today that he was before this discrimination happened to
25 him. Sergeant Bonenberger knows that the one thing he can't

1 change, the one thing he can't do to get the Academy --
2 Assistant Academy Director position he wants so desperately --
3 he can't change the color of his skin.

4 THE CLERK: Five minutes.

5 MS. PETRUSKA: Thank you.

6 So if that's the criteria for the Assistant Director
7 position, he'll never get that job.

8 At this point, the color of Sergeant Bonenberger's
9 skin doesn't even matter. You heard Lieutenant Muxo testify
10 that as long as he's at the Academy Sergeant Bonenberger will
11 never work there. While Lieutenant Muxo claims that that's
12 because Sergeant Bonenberger lied about him, today, you're the
13 finder of fact; you get to decide who's telling the truth and
14 who's lying, not Lieutenant Muxo. His day is over. I submit
15 to you that Sergeant Bonenberger will never work his dream job
16 as long as he continues to work at the St. Louis Police
17 Department, and he will continue to suffer emotional damage
18 because of that.

19 You heard him say things used to roll off his back,
20 now they bother him. It caused stress for his family. He's
21 not as attentive to his son, his five-year-old son now --
22 three years old at the time it happened. Sure, he still tries
23 to do the same job to the best of his ability, but things are
24 not the same, and they're never going to be the same.

25 His wife testified he's lost the spark, that her

1 husband really believed that if he did a good job, tried the
2 best, he could win that over, he could win over at the end of
3 the day, that color wouldn't matter, but it didn't work for
4 him. He crashed into that wall. You heard her testify that
5 her husband's years at the Academy were the happiest he ever
6 was, that he would have taught there for free. She also told
7 you that the police department is like family, not just to him
8 but to both of them. They both work there, and he's a guy's
9 guy, and what his family did to him made him angry,
10 disappointed, disillusioned. She also told you that he's a
11 man's man, so he tries to hide all that, but she sees the
12 hurt. She knows it's there. She told you he's still obsessed
13 by the injustice because he likes to right wrongs, but this is
14 a wrong he can't right.

15 So, again, how do you value losing your dream? How
16 do you value those things that make your life worth living,
17 those things that make your life the happiest, those things
18 that give you meaning? Are those things worth \$10,000,
19 \$100,000, a million dollars? Are they priceless? I submit to
20 you there is a way to value Sergeant Bonenberger's damages,
21 his emotional damages. He's been living with this intentional
22 illegal discrimination for three years now. I suggest you
23 award him \$100,000 for each of those years he's had to suffer
24 with this. I further suggest that you award him another
25 \$100,000 because he's going to have to live with this for the

1 rest of his life and the rest of his career, so I'm suggesting
2 you award a total of \$400,000.

3 In addition to awarding Sergeant Bonenberger damages
4 for his emotional pain and suffering, you can punish the
5 Defendants, Lieutenants Muxo -- Lieutenant Muxo, Colonel
6 Harris, Chief Isom, for their intentional discrimination by
7 awarding Sergeant Bonenberger punitive damages. Punitive
8 damages are awarded for the purpose of punishing a defendant
9 for engaging in misconduct and deterring that defendant and
10 others from engaging in the same misconduct in the future. I
11 think punitive damages for Lieutenant Muxo and Sergeant or
12 Colonel Harris are fairly easy. They engaged in intentional
13 discrimination. You can punish that.

14 It may be a little harder to figure out why to punish
15 Sergeant or Chief Isom. The standard is reckless
16 indifference. You get to decide if he was recklessly
17 indifferent to the discrimination that was presented to him,
18 and I submit that there is sufficient evidence to find that
19 because he looked into this and he didn't even get it right.
20 I mean that's -- thank you.

21 Punitive damages, again, deter conduct. A police
22 department is important. You need to tell this department
23 that they can't march their colonels, their white shirts,
24 their lieutenants in here and lie to you to cover up illegal
25 discrimination. That's a cancer in that department, and it

1 needs to end. So what kind of money do you award for punitive
2 damages? You know, again, is it \$100,000? Is it \$200,000,
3 \$500,000? I don't know. That's why you're in the jury box.
4 You're the voice of this community to say what we do to punish
5 this kind of conduct, and so I'm going to leave that to you,
6 but, again, as you're considering how you want to punish this
7 kind of conduct, you have to look at not only the
8 discrimination but the coverup and the coverup which
9 includes --

10 THE CLERK: Time.

11 MS. PETRUSKA: Thank you.

12 THE COURT: You may proceed.

13 MS. TUCKER: Thank you, Your Honor. I'm actually
14 going to speak from the actual podium, so I can use the --

15 THE COURT: Yeah. You can just move the mike over if
16 you want, however you want to do it. Yeah. Either one is
17 fine. Yeah, there you go.

18 MS. TUCKER: Good morning, ladies and gentlemen. The
19 defense would also like to extend to you their appreciation
20 for your attention and dedication with regards to this lawsuit
21 and asking you to also listen to all of the evidence in this
22 case and not just bits and pieces. It's important that you
23 listen to all the evidence and look at the big picture here in
24 this case.

25 Ladies and gentlemen, when my colleague stood up here

1 in front of you on Monday morning, he told you in opening
2 statements that this case was going to consist of layer after
3 layer after layer of he said this and he said that and he said
4 this, and that is exactly what has happened over these past
5 two days.

6 I'd like to start with the Plaintiff in this matter,
7 Sergeant Bonenberger. When this incident occurred,
8 Bonenberger had been with the Police Department for 17 plus
9 years. As a matter of fact, when this position became
10 available for transfer, he had -- he was a sergeant. He had
11 been a sergeant for a year and a half. Now, if you recall, he
12 stood -- he sat on that stand and he testified in depth and at
13 length with regards to his responsibility for his -- this
14 platoon of officers that he managed. He testified at length
15 with regards to it was his responsibility to provide guidance
16 to these officers and because this was his responsibility, he
17 was familiar with the policies and the procedures and the
18 special office or the special orders. He was familiar with
19 everything, and it was also his responsibility to make sure
20 that he and his officers followed policy and procedure;
21 however, ladies and gentlemen, in September of 2010, when he
22 expressed an interest in the Academy -- in the Assistant
23 Academy Director's position, he was allegedly told by
24 Lieutenant Muxo that that position was going to an
25 African-American. Now, when he said that, when Plaintiff's

1 counsel elicited that testimony, she also asked him, "Well,
2 when he -- when he -- when he told you that, did you tell
3 anybody; did you report it?" His response was, "Not
4 directly."

5 So they went on. She went on and asked, solicited
6 more questions and more testimony from him, and then he
7 decided that that indirect testimony or that indirect exchange
8 would have come -- would have been between he and one of his
9 friends at the Police Department, James Dandridge, and they
10 read from this particular email, and this is an email that it
11 went back and forth between James Dandridge, which he refers
12 to himself as Jim in the email, and Sergeant Bonenberger. The
13 first entry was, "This has your" -- from -- from his friend
14 Jim to Bonenberger -- "This has your name all over it,"
15 referencing the Assistant Academy Director position.

16 Bonenberger responds back, "I appreciate the pat on
17 the back. If you notice, I didn't meet the minimum
18 requirement of three years as a supervisor. I'm still going
19 to put in for it just to see who they put there. I don't
20 think there's anybody else that has the qualifications that I
21 do. Just my opinion. We'll see."

22 Jim goes back to Bonenberger, "I would talk to Muxo
23 also. Thanks for the invite for the card party. It totally
24 slipped my mind."

25 Bonenberger back to Jim, "No problem, Jim. I already

1 spoke to him, and there is somebody else already picked for
2 the job. We shall see who it is in the near future. I'm sure
3 it is someone that is a much better choice and completely
4 competent and qualified for the position."

5 Ladies and gentlemen, there is nothing about this
6 email that either directly or indirectly advises his friend
7 Jim that he was told by Lieutenant Muxo that this position was
8 going to an African-American female, specifically, Angela
9 Taylor, because if you look at the last entry, Bonenberger
10 even says this position -- in his mind, this position was
11 going to somebody that was completely competent and a
12 qualified person. That could not have been Sergeant Angela
13 Taylor because Bonenberger testified on numerous occasions
14 that she was not qualified.

15 After Plaintiff finished her direct testimony or her
16 direct of her client, I got up and I asked Bonenberger, "Now,
17 Sergeant Bonenberger, you knew hiring somebody based solely on
18 the color of their skin is wrong; you know that, right?" He
19 testified, "Yes."

20 I then asked him if he was familiar with the policies
21 and procedures of the Department as it related to
22 discrimination. Now, remember, just moments earlier, he had
23 testified that as a sergeant, as a platoon leader, as -- as --
24 as the person in charge of all these officers that he was in
25 charge of, he was familiar with all of the policies and

1 procedures and the special orders, and he said, yes, he was,
2 he was familiar with the policy and that being a
3 discriminatory practice.

4 I then asked him, "Well, Sergeant Bonenberger, you
5 knew this was a violation, so what did you do? Who did you
6 tell?" He sat, he thought, and then he finally said, "No one,
7 but I did file a grievance."

8 Okay. So I showed Sergeant Bonenberger that
9 grievance, and this grievance will be in your exhibit package
10 under Plaintiff's Exhibit 13. Sergeant Bonenberger and I went
11 through this grievance line by line by line. He testified
12 that he could say anything in this grievance that he wanted to
13 say. He was not limited to subject matter. He was not
14 limited to the substance of what he could put in this
15 grievance. The only thing he was limited to was possibly
16 these 11 lines; however, there's not even 11 lines there, but
17 the bottom line is he was not limited. He could put any -- he
18 could grieve anything he wanted to grieve. And what did he
19 grieve? "I didn't get an interview."

20 Okay. "So once again, Sergeant Bonenberger, where in
21 this particular document does it say you were discriminated --
22 you are grieving because you were discriminated against?
23 Where in this document does it say that Lieutenant Muxo told
24 you that an African-American was going to get this position
25 and not you? Where in this agreement or where in this

1 grievance does it say that Lieutenant Muxo told you not even
2 to -- not even to bother applying for a position?" He grieved
3 the fact that he did not get an interview.

4 So then we went on because he tried to justify his
5 grievance by saying, well, in the section marked "A fair
6 solution to my grievance," which is right down here, he wrote
7 in there, "The EEOC," and because he wrote or because he put
8 "EEOC" in there, then the Department should have just
9 automatically knew, they should have automatically -- flares
10 should have went off, they should have automatically known,
11 well, this is some kind of discrimination matter. No. It was
12 up -- it was up to Bonenberger to grieve the discrimination.
13 It wasn't up to the Department to try to figure out what was
14 in Bonenberger's head.

15 Ladies and gentlemen, it was not until months after
16 sulking that Bonenberger alleged for the very first time that
17 he had actually been discriminated against, and that's when he
18 filed his EEOC charge and this eventual lawsuit. It wasn't
19 until months after sulking that Bonenberger made the
20 allegation that Muxo said that Lieutenant Colonel Harris said
21 that this position had to go to an African-American.

22 Now, ladies and gentlemen, Lieutenant Muxo also took
23 the stand in this case. Lieutenant Muxo has been with the
24 Department for an extended period of time, well over 17 years.
25 He's been an officer, he's been a sergeant, and now he is a

1 lieutenant. Lieutenant Muxo knows the policies and procedures
2 of the Department. He knows what discrimination is. He knows
3 discrimination is illegal. He knows transferring someone into
4 a position solely based on the color of their skin is wrong.
5 Lieutenant Muxo testified to you that he had never had a
6 conversation with Bonenberger with regards to filling that
7 position with an African-American, either before or after the
8 job was posted or the position was filled.

9 Now, ironically, Sergeant Boelling, Bonenberger's
10 colleague of over seven years, came in and he sat down and he
11 testified -- she testified that Muxo also told her that he was
12 going to fill this position with Angela Taylor, specifically,
13 an African-American. Now, ironically, this statement comes
14 from the person that's being transferred out of the position,
15 and why on earth -- Ms. Petruska told you, suggested to you
16 earlier to use your common sense. I ask you to also do that.
17 Why on earth would Lieutenant Muxo go to Sergeant Boelling, of
18 all people, and say that?

19 Muxo also testified that he had never had any
20 conversations with Lieutenant Colonel Harris with regard to
21 the color of someone's skin and who -- and what color that
22 person needed to be for the Assistant Academy Director
23 position. Sergeant Harris confirmed -- I mean -- I'm sorry.
24 Lieutenant Colonel Harris confirmed that. He never talked to
25 Muxo about the color of somebody's skin with regards to who

1 was going to fill that position. Lieutenant Colonel Harris
2 relied on Muxo to know what type of person he wanted for that
3 position, who he could work well with, and relied on his
4 recommendation and suggestions.

5 Counsel for Plaintiff also brought up several emails
6 that had gone back and forth between Bonenberger and
7 Lieutenant Muxo. Now, ladies and gentlemen, in this day and
8 age with this technology, we all get email -- I would imagine
9 we all get emails daily. I couldn't tell you what emails I
10 got yesterday or let alone two years ago. I don't know, but
11 the bottom line is when we brought these emails to Lieutenant
12 Muxo's attention during the course of this trial, Lieutenant
13 Muxo didn't deny getting those emails. He said that he -- he
14 could have got them or maybe he didn't get them; he just
15 wasn't sure, but he did know that if he did get them, those
16 are not the types of emails in his position as a lieutenant
17 over his unit that he would have responded to because he
18 felt -- he knew what Bonenberger was up to. He knew
19 Bonenberger at that point was trying to get a leg up. He knew
20 Bonenberger was basically trying to seal a position that also
21 Bonenberger knew had to go through the application process.

22 Now, ladies and gentlemen, there is no question,
23 there is no issue; we all concede the fact that Angela Taylor,
24 Sergeant Angela Taylor, was transferred into the position as
25 Assistant Academy Director. She received this transfer

1 because none of the application -- none of the applicants,
2 neither she nor Bonenberger nor Buckeridge, the third person,
3 met the minimum qualifications. None of them had been
4 sergeant for three years, although Bonenberger tried to say,
5 "Well, you know, I was -- I did act as a sergeant, so that
6 probably should have been considered." No, he had not been a
7 sergeant for three years, so none of the applicants met that
8 first qualification. However, Sergeant Angela Taylor did get
9 the position, but she did not get that position because of the
10 color of her skin. She got that position because Lieutenant
11 Muxo had worked with her for several months in the Eighth
12 District. Lieutenant Muxo had managed her for several months
13 in the Eighth District. Lieutenant Muxo had watched her
14 command her platoon for several months while in the Eighth
15 District. Lieutenant Muxo had watched her interact with the
16 people that she was in charge of. Sergeant Bonenberger -- I
17 mean Lieutenant Muxo knew that she had the personality that he
18 needed in that position and the skill set. He knew she could
19 bring those things to that position, and because of those
20 things and only because of those things did Lieutenant Muxo
21 make the recommendation that she be detached into the position
22 as Assistant Academy Director. He did that with those reasons
23 and in conformity with the policies and procedures of the
24 Department that allowed him to do just that.

25 Now, also during that time, Lieutenant Muxo also knew

1 from his interactions with Bonenberger that although he was a
2 fine street cop -- Lieutenant Muxo didn't have any disparaging
3 words against Bonenberger with regards to his performance as a
4 police officer. He said he was a fine cop; he was a good
5 street cop; if you needed something done on the streets,
6 Bonenberger was your guy. Bonenberger's wife testified that
7 Bonenberger had arrest after arrest after arrest, but that is
8 not what Lieutenant Muxo's vision was for the Academy. That
9 is not the person that Lieutenant Muxo, as Commander of that
10 unit, wanted to be the first face the recruits saw when they
11 came in the Academy. Lieutenant Muxo knew for certain that
12 Sergeant Bonenberger, although a good street cop, did not have
13 the personality type or the skill set, despite the fact that
14 he taught. Yeah, he had taught at the Academy, but teaching
15 at the Academy and being the Assistant Academy Director are
16 two different jobs. They require two different skill sets.
17 They demand two different things. You need two different
18 types of personalities to do those things, and Lieutenant Muxo
19 knew that Sergeant Bonenberger did not have that particular
20 skill set. Like I stated, Lieutenant Muxo was well within
21 Department policy to make the recommendation to have Angela
22 Taylor detached into the position as Assistant Academy
23 Director, and he did so for reasons totally unrelated to her
24 race.

25 Lieutenant Colonel Harris was well within policy and

1 procedure to rely on what Lieutenant Muxo felt he needed to
2 run his unit, and he did that when he received the memo from
3 Lieutenant Muxo stating that none of the parties met the
4 minimum qualifications, "but because I've worked with Angela
5 Taylor and I know her skill set and I know she can -- she can
6 perform the job in the manner in which I need her to perform
7 the job, I am requesting that she be detached." Lieutenant
8 Muxo in accordance -- I mean Lieutenant Colonel Harris in
9 accordance with policy and procedures sent that up to Chief
10 Isom.

11 Now, Chief Isom is the Chief of Police, and I'm sure
12 we can all relate to the fact that upper management has its
13 responsibilities and the people that lead up to upper
14 management also has its responsibilities. Chief Isom told you
15 that instead of detaching Sergeant Taylor, he decided to
16 transfer her. He knew there was a new recruit class coming
17 in. He knew that position had been empty for a while and it
18 needed to be filled. In his reasoning, he included in his
19 reasoning because Angela Taylor had more time on and because
20 she had a clean record, and Chief Isom was questioned about
21 that at length.

22 THE CLERK: Ten minutes.

23 MS. TUCKER: Thank you. He was questioned about that
24 at length, and he testified that he -- Sergeant Angela Taylor
25 did have a cleaner record than Bonenberger's. No, hers wasn't

1 crystal clear, clean with nothing on it, but it was cleaner in
2 comparison to Bonenberger's. That went on and on and on that
3 he and I sat here and talked about.

4 Ladies and gentlemen, this case comes down to
5 Bonenberger being embarrassed and being angry and being mad
6 because he didn't get a job that he felt he was entitled to
7 have.

8 Now let's talk about the damages in this case, ladies
9 and gentlemen. Sergeant Bonenberger -- if you only listened
10 to his testimony, you would think that having the Assistant
11 Academy Director's job is a golden ladder to becoming a
12 lieutenant, but then Plaintiffs put on David Robbins, their
13 expert, and they had one of their colleagues read his
14 deposition testimony, and he testified that in addition to
15 possibly high profile jobs, you also have to take a test and
16 do well on this test. Part of the test is objective, part of
17 the test is graded by an outside firm, and you -- and you
18 rank. You get ranked in clusters, A, B, C, D, and when
19 Sergeant Bonenberger took that exam, he ranked in the C
20 cluster, so even had Bonenberger been in the Assistant Academy
21 Director's position, over 42 people would have had to have
22 been promoted at this stage before he could be a lieutenant.
23 This was not his golden ladder to becoming a lieutenant. He
24 had a lot more work to do, and there's nothing, there's been
25 absolutely no evidence to say that he can't do that good work

1 from other high profile positions.

2 Like I said earlier, ladies and gentlemen, this case
3 comes down to Bonenberger being embarrassed because he had
4 told everybody; he testified everybody knew that this was his
5 dream job. Well, ladies and gentlemen, we all may have dream
6 jobs, but if you aren't -- but if you don't have the
7 qualifications, the skill set, the personality, you can dream
8 forever.

9 Ladies and gentlemen, the Judge has not given you
10 this particular jury instruction yet, but part of the jury
11 instructions will be a verdict director, and the verdict
12 director sets out what you need -- what you need to do. As I
13 stated, in order for you to, first of all, find the St. Louis
14 Board of Police Commissioners liable, one of the Defendants
15 also has to be liable, so the Board of Police Commissioners
16 cannot be liable by itself.

17 Lieutenant Michael Muxo. Lieutenant Muxo did not do
18 anything against the law. He didn't violate any policies, any
19 procedures. He specifically testified why -- absent the color
20 of her skin -- why he requested the transfer of Sergeant
21 Taylor.

22 Lieutenant Colonel Reggie Harris told you that he had
23 never had any communications with Lieutenant Muxo regarding
24 the color of anybody's skin and what color the person needed
25 to be to fill that position.

1 And Chief Isom did what he is required to do; he did
2 what he is allowed to do under the policies and procedure by
3 the Board. He had the responsibility to transfer personnel,
4 or the responsibility for personnel rests with the chief. He
5 did what he had the authority to do.

6 Ladies and gentlemen, when you take this verdict form
7 back in the jury room, we ask that you find in favor of the
8 St. Louis Board of Police Commissioners, Defendant Michael
9 Muxo, Defendant Reggie Harris, and Defendant Daniel Isom
10 because Plaintiff has not proven his case.

11 And then there's another section that you would have
12 to go on down to. Has it been proved that the Defendants
13 would not have transferred Plaintiff to the position of
14 Assistant Academy Director regardless of his race? Lieutenant
15 Muxo told you Bonenberger was not getting that job. There was
16 no conspiracy here. The third issue, conspiracy -- there's no
17 conspiracy here. Ladies and gentlemen, Angela Taylor
18 qualified for that job, and she rightly got that job.

19 We find Plaintiff's damages, actual damages -- well,
20 Bonenberger testified although he's been all -- he's had all
21 these emotional problems and all this, he hasn't seen one
22 doctor. He testified he lost his -- his reputation has been
23 impaired and all this, but he's still getting "meets and
24 exceeds expectations" on his evaluation. He was -- he
25 campaigned and was voted in as President of the Police

1 Officers Association. He told you that association is an
2 association of officers, sergeants, lieutenants, lieutenant
3 colonels, and the chief, the current chief, so he hasn't lost
4 reputation with the Department.

5 And, ladies and gentlemen, of course, we ask that you
6 say there were no punitive damages here because there was no
7 discrimination.

8 Once again, ladies and gentlemen, we thank you for
9 your service. We ask that -- as Plaintiff's counsel indicated
10 earlier -- that you use your common sense. Please listen to
11 all of the evidence, look at the big picture, and we are
12 confident that once you do that you will return a fair and
13 just verdict. Thank you for your attention.

14 MS. PETRUSKA: I want to -- well, I want to grab the
15 microphone first so you can hear me. No. I realized I had to
16 do that. I wasn't expecting you to.

17 I want to start by picking up on a few things you
18 heard from the Defendants' closing. You heard that Sergeant
19 Bonenberger didn't report the discrimination, it wasn't
20 included in the grievance, but you heard him testify he didn't
21 want to throw Lieutenant Muxo under the bus when he did the
22 right thing by telling him what was really going on. Again,
23 you get to use your common sense. If somebody is doing the
24 right thing, you're going to want to try and protect them.
25 That's what Sergeant Bonenberger was doing, and -- and he had

1 to stop protecting Lieutenant Muxo because the Department
2 wouldn't do the right thing. The Defendants want you to
3 believe there's this huge time frame between the time he files
4 the grievance and the charge of discrimination, but you heard
5 testimony during the trial; it was about a month. There's no
6 huge time frame there. He gave the Department one chance to
7 do the right thing without throwing the dirty laundry of his
8 family out into the open, and when his family didn't do the
9 right thing, he had to do the right thing and tell everybody
10 what happened.

11 You've heard about these two different skill sets.
12 There's two different skill sets for an instructor and an
13 Assistant Director at the Academy. Well, if there's these two
14 different skill sets, why does their own job description say
15 you need to have prior Academy experience? I mean it doesn't
16 make sense.

17 You heard the Defendant say that the St. Louis Police
18 Officers Association presidency is a career enhancer, but you
19 heard three people testify that that's not true because he's
20 labor against management now. I mean the white shirts aren't
21 going to be any happier with him now that he's the Association
22 President than they were with him when he told the truth about
23 what happened to him, and look at the timing of that. He ran
24 to be President of the Association after he was illegally
25 discriminated against. You heard his wife say he's the guy

1 that has to right the wrongs. Ask yourself; why did he run
2 for President of the Association? He has to right the wrongs
3 in the Department.

4 I told you when I started my argument that the
5 Defendants have an answer for everything, but the problem is
6 those answers just don't make sense, so let's talk about that
7 now. Defendants want you to believe that Sergeant Boelling is
8 lying because Sergeant Blake Tucker is backing up his friend
9 and his boss, Lieutenant Muxo, the same boss who told you that
10 Sergeant Bonenberger is not welcome at the Academy because
11 Sergeant Bonenberger told the truth. So can you imagine what
12 would happen to Sergeant Tucker if he'd have told the truth?
13 Sergeant Tucker says that conversations with Sergeant Boelling
14 about the Assistant Director position never took place. If
15 you think about it, this testimony actually bolsters Sergeant
16 Boelling's testimony and her credibility. If she was going to
17 lie to you, would she say there was a witness present for
18 these conversations? She'd have lied about that, too. I mean
19 why would you put a witness into the scene of a conversation
20 unless it took place? So, you know, if she were going to lie
21 to you, she would have said, "Nope. All these conversations
22 were just between me and Lieutenant Muxo -- no witnesses,
23 story over," but she told you, "Yeah, you know, we would --
24 we'd shoot the breeze; Sergeant Blake Tucker was there." You
25 know, Sergeant Blake Tucker -- he is now -- and you can

1 believe this -- Sergeant Blake Tucker -- now part of the
2 ongoing conspiracy against Sergeant Bonenberger, not only to
3 discriminate against him because of his race but to cover it
4 up. Sergeant Tucker -- simply part of the coverup.

5 You heard Lieutenant Muxo and Chief Isom testify.
6 The Academy is important to the Police Department, and it's
7 important because it lays the foundation for an officer's
8 career. A good foundation makes for a good officer. You
9 heard testimony, and you saw the policy. This assignment was
10 supposed to be based on the knowledge, skills, and abilities
11 of the candidates. Chief Isom, Colonel Harris, and Lieutenant
12 Muxo --

13 THE CLERK: Five minutes.

14 MS. PETRUSKA: -- all testified that they didn't even
15 know the requirements of the position. How can you determine
16 who has the best knowledge, skills, and abilities if you don't
17 even know what the job requires?

18 THE CLERK: Five minutes.

19 MS. PETRUSKA: Thank you. That's because none of the
20 decision makers needed to know what those requirements were
21 because there was only one requirement in their mind and that
22 was that she -- that the candidate be black. They all knew
23 the race of Sergeant Taylor when she got the job. They
24 testified to that.

25 So let's talk about those knowledge, skills, and

1 abilities. Sergeant Bonenberger had taught at the Academy.
2 Sergeant Taylor had no Academy experience. Sergeant
3 Bonenberger had his instructor development license. Sergeant
4 Taylor didn't. That was a preferred qualification for the
5 job. Sergeant Bonenberger -- field training officer.
6 Sergeant Taylor -- not. You heard two people testify that
7 field -- revamping the field training officer program was
8 important, but they'd pick a person who doesn't have any
9 experience in doing that? Sergeant Bonenberger -- highly
10 decorated officer. Sergeant Taylor -- not. They tell you
11 those awards and commendations don't matter, but you don't
12 have to believe that because it's in the personnel files. Why
13 would it be there if it doesn't matter. Look at Sergeant
14 Bonenberger's appraisals against Sergeant Taylor. Much better
15 officer, according to his own supervisors, than Sergeant
16 Taylor.

17 They want you to believe that this job was supposed
18 to go to a personality type, but that's not what their own
19 rule says. It says it goes to the person with the best
20 knowledge, skills, and abilities. You've met Sergeant
21 Bonenberger. Do you have any doubt now that he had the
22 knowledge, skills, and abilities to do that job? Do you have
23 any doubt that he was the best person for that job? Again, it
24 just doesn't make sense.

25 They want to talk about, you know, this month or two

1 that Sergeant Bon -- or Sergeant Taylor and Lieutenant Muxo
2 worked together, but, again, it doesn't make sense. You don't
3 pick a person -- when the requirements are knowledge, skills,
4 and abilities, you don't pick a person just because you worked
5 for them before.

6 And, again, look at what the Academy is supposed to
7 do. You're trying to train the best officers. You would
8 think you would want what you consider to be one of your
9 finest, best officers meeting your new recruits at the door to
10 try and teach them to be the best that they can be. You
11 wouldn't want a person who's only even applied for the job
12 because she wants to work 9:00 to 5:00. I mean she didn't
13 have any passion for this job. He did.

14 Chief Isom told you, "I'm the man. The buck stops
15 with me." You also heard him testify -- it was kind of
16 surprising -- that he didn't want to transfer her to the
17 position and then assign her or -- I'm sorry -- detach her and
18 then assign her a year later because that would look like
19 smoke and mirrors. Well, he's right. It did look like smoke
20 and mirrors, but actually transferring Angela Taylor to the
21 position when she had no experience and no qualifications,
22 never taught a single class at the Academy -- that didn't just
23 add smoke to the situation; that exposed the fire, and the
24 fire here is illegal discrimination.

25 You heard him testify -- you heard Chief Isom

1 testify, "I picked -- I picked Taylor because she had more
2 time in rank." Not true. "She had a clean disciplinary
3 record." Not true. He said, "I've been a police officer for
4 forever. I know how important it is to get these things
5 right," but now he has an explanation for why he got it wrong,
6 but you saw how easy it was to get it right. All he had to do
7 was look at the applications.

8 THE CLERK: One minute. One minute.

9 MS. PETRUSKA: Thank you. In closing, I want to say
10 two things. Jimmy Carter said, "I say to you quite frankly
11 that the time for racial discrimination is over. If you don't
12 like Democrats, here's a Republican, Rand Paul." I'm not in
13 favor of discrimination in any form. It doesn't matter your
14 politics. Discrimination in this country is wrong. It's
15 wrong to ruin somebody's career. You heard them say that he
16 could still compete for this sergeant's or this lieutenant's
17 exam. He's never going to be a lieutenant. He's in the C
18 cluster. It's a subjective test. Half of the people that
19 grade that test are on the Department. He's going nowhere.
20 What you need to do here is -- he said -- he said to you --
21 his wife said to you -- "I right wrongs. I get the bad guys."
22 You need to get the bad guys. You need to give him some --

23 THE CLERK: Time.

24 MS. PETRUSKA: Thank you.

25 (Excerpted proceedings ended at 11:47 a.m.)

CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 34 inclusive.

Dated at St. Louis, Missouri, this 30th day of December, 2013.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter